

CORRECTED FISCAL NOTE

HB 3148 - SB 3754

April 29, 2008

SUMMARY OF BILL: Broadens the definition of “dangerous felony” to include second degree murder, criminally negligent homicide, robbery, aggravated robbery, especially aggravated robbery, rape, sexual battery, theft over \$10,000, arson, aggravated arson and burglary.

ESTIMATED FISCAL IMPACT:

On March 5, 2008, we issued a fiscal note which indicated *an increase in state expenditures of \$68,997,700/Incarceration**. Based on the additional information provided by the Department of Correction, the estimated fiscal impact of this bill is:

(CORRECTED)

Increase State Expenditures - \$64,019,500/Incarceration*

Assumptions:

- Currently it is a Class D felony for a person to possess a firearm with the intent to go armed during the commission of or attempt to commit a dangerous felony. It is a Class C felony to employ a firearm during the commission of, attempt to commit, flight or escape from the commission of, or flight or escape from the attempt to commit a dangerous felony. The minimum sentences range from three to 10 years, depending on the defendant’s criminal history.
- During FY07, there were 3,257 offenders admitted for dangerous felonies. Based on previous estimates, approximately two and one-half percent of those offenders had possession as a second offense (81). According to the U.S. Census Bureau, population growth in Tennessee has been 1.09 percent per year for the past 10 years, yielding a projected compound population growth of 13.6 percent over the next 10 years. Population growth will result in nine additional offenders in the tenth year. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 90 offenders. The Department of Correction (DOC) estimates 25 percent of those had a prior conviction (23) and will serve a five-year minimum sentence at 85 percent (4.25 years). According to the DOC, the average operating cost per inmate per day for calendar year 2008 is \$62.78. The cost per inmate at 4.25 years

is \$97,454.02 ($\$62.78 \times 1,552.31$ days). The total additional operating cost for 23 offenders in the tenth year is \$2,241,442.46 ($\$97,454.02 \times 23$). The remaining 67 offenders would serve a three-year minimum sentence at 85 percent (2.55 years). The cost per inmate at 2.55 years is \$58,472.66 ($\62.78×931.39 days). The total additional operating cost for 67 offenders in the tenth year is \$3,917,668.22 ($\$58,472.66 \times 67$).

- During FY07, 161 offenders were admitted for second degree murder. DOC estimates 50 percent of those involved the employment of a firearm (81). Population growth will result in nine additional offenders in the tenth year. The maximum cost in the tenth year is based on 90 offenders. DOC estimates 25 percent of those had a prior conviction (23) and will serve a 10-year minimum sentence at 85 percent (8.5 years). The cost per inmate at 8.5 years is \$194,908.67 ($\$62.78 \times 3,104.63$ days). The total additional operating cost for 23 offenders is \$4,482,899.41 ($\$194,908.67 \times 23$). The remaining 67 offenders will serve a six-year minimum sentence at 85 percent (5.1 years). The cost per inmate at 5.1 years is \$116,945.33 ($\$62.78 \times 1,862.78$ days). The total additional operating cost for 67 offenders is \$7,835,337.11 ($\$116,945.33 \times 67$).
- During FY07, 10 offenders were admitted for criminally negligent homicide. DOC estimates 25 percent of those involved the employment of a firearm (3) and will serve a six-year minimum sentence at 85 percent (5.1 years). The cost per inmate at 5.1 years is \$116,945.33 ($\$62.78 \times 1,862.78$ days). The total additional operating cost for three offenders is \$350,835.99 ($\$116,945.33 \times 3$). Twenty-five percent of those three offenders had a prior conviction (1) and will serve a 10-year minimum sentence at 85 percent (8.5 years). The cost per inmate at 8.5 years is \$194,908.67 ($\$62.78 \times 3,104.63$ days).
- During FY07, 890 offenders were admitted for aggravated robbery. DOC estimates 15 percent of those offenders could also be charged with possession of a firearm (134). Population growth will result in 16 additional offenders in the tenth year. The maximum cost in the tenth year is based on 150 offenders. DOC estimates 25 percent of those had a prior conviction (38) and will serve a 10-year minimum sentence at 85 percent (8.5 years). The cost per inmate at 8.5 years is \$194,908.67 ($\$62.78 \times 3,104.63$ days). The total additional operating cost for 38 offenders is \$7,406,529.46 ($\$194,908.67 \times 38$). The remaining 112 offenders will serve a six-year minimum sentence at 85 percent (5.1 years). The cost per inmate at 5.1 years is \$116,945.33 ($\$62.78 \times 1,862.78$ days). The total additional operating cost for 112 offenders is \$13,097,876.96 ($\$116,945.33 \times 112$). DOC estimates that 15 percent of those 890 offenders (134) would receive a conviction for robbery rather than aggravated robbery in order to allow for the enhanced sentence for employment of a firearm provided by the proposed bill. Population growth will result in 16 additional offenders in the tenth year. The

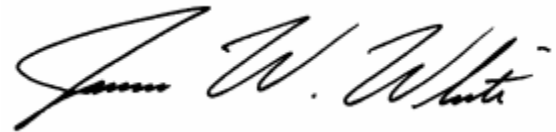
maximum cost in the tenth year is based on 150 offenders. Estimate assumes that 25 percent of these 150 offenders (38) would currently be convicted of a Class B felony served at 85 percent (6.8 years) and the remaining 75 percent (112) would be convicted of a Class B felony served at 30 percent (2.4 years). Under the proposed bill, these offenders would be convicted of robbery and the sentence would be reduced to 0.9 years and then enhanced to a six-year minimum sentence at 85 percent (5.1 years), and if the offender had a prior conviction, the sentence would be enhanced to a 10-year minimum sentence at 85 percent (8.5 years) for the employment of a firearm. 112 offenders would serve 3.6 years as a result of this bill (2.4 years – 0.9 years = 1.5 years; 5.1 years – 1.5 years = 3.6 years). The cost per inmate at 3.6 years is \$82,549.42 (\$62.78 x 1,314.90 days). The total additional operating cost for 112 offenders is \$9,245,535.04 (\$82,549.42 x 112). 38 offenders would serve 2.6 years (6.8 years – 0.9 = 5.9 years; 8.5 years – 5.9 years = 2.6 years). The cost per inmate at 2.6 years is \$59,619.03 (\$62.78 x 949.65 days). The total additional operating cost for 38 offenders is \$2,265,523.14 (\$59,619.03 x 38).

- During FY07, 515 offenders were admitted for robbery. DOC estimates 15 percent of those involved the employment of a firearm (77). Population growth will result in nine additional offenders in the tenth year. The maximum cost in the tenth year is based on 86 offenders. DOC estimates 25 percent of those had a prior conviction (22) and will serve a 10-year minimum sentence at 85 percent (8.5 years). The cost per inmate at 8.5 years is \$194,908.67 (\$62.78 x 3,104.63 days). The total additional operating cost for 22 offenders is \$4,287,990.74 (\$194,908.67 x 22). The remaining 64 offenders will serve a six-year minimum sentence at 85 percent (5.1 years). The cost per inmate at 5.1 years is \$116,945.33 (\$62.78 x 1,862.78 days). The total additional operating cost for 64 offenders is \$7,484,501.12 (\$116,945.33 x 64).
- During FY07, 75 offenders were admitted for rape. DOC estimates 10 percent of those involved the employment of a firearm (8). Population growth will result in one additional offender in the tenth year. The maximum cost in the tenth year is based on nine offenders. DOC estimates 25 percent of those had a prior conviction (2) and will serve a 10-year minimum sentence at 85 percent (8.5 years). The cost per inmate at 8.5 years is \$194,908.67 (\$62.78 x 3,104.63 days). The total additional operating cost for two offenders is \$389,817.34 (\$194,908.67 x 2). The remaining seven offenders will serve a six-year minimum sentence at 85 percent (5.1 years). The cost per inmate at 5.1 years is \$116,945.33 (\$62.78 x 1,862.78 days). The total additional operating cost for seven offenders is \$818,617.31 (\$116,945.33 x 7).
- Any cost associated with the caseloads for the state trial courts can be accommodated within existing judicial resources.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "White".

James W. White, Executive Director

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